

10 Oct 2002

From: Deputy Assistant Judge Advocate General, Claims,
Investigations & Tort Litigation (Code 15)

Subj: CLAIMS UPDATE: DAMAGE TO RENTAL CARS¹ - GOVERNMENT CAR
RENTAL AGREEMENT NUMBER 3

Ref: (a) Commander Military Management Command msg (DTG:
0118082Z Oct 02) rewrite of the U.S. Government Car
Rental Agreement and Rental Car Information
(b) Joint Federal Travel Regulation (JFTR)
(c) Joint Travel Regulation (JTR)

1. Government travelers on temporary additional duty (TAD) are frequently authorized a rental car to perform their official travel. On occasion, the rental cars are damaged and the rental agency attempts to collect from the traveler and/or their command for the damage. This update amplifies guidance in reference (a) provided to the government traveler and their command about the most recent changes to the Military Traffic Management Command (MTMC) Agreement and the procedures dictated by the Joint Federal Travel Regulations (JFTR) and the Joint Travel Regulations (JTR). [References (b) and (c)] The JFTR applies to military members and the JTR to civilian employees.

2. By way of background, MTMC has negotiated an agreement, hereafter referred to as the Agreement, with numerous rental car companies in the United States and abroad.² The Agreement provides primary insurance coverage for rental vehicles used for official business by U.S. military and civilian employees, Government contractors, most NATO military members and employees, and U.S. Government local national employees in some foreign countries.

3. After lengthy negotiations throughout the past year, there have been significant changes made to the prior Agreement that had been in effect since 1 November 2001. These changes were incorporated into the current Agreement that became effective 1

¹ This Claims Update does not include a discussion of damage to vehicles leased by the government for military exercises. That type of transaction is not covered by the MTMC Agreement. For more information on that subject, please contact your local contracting officer.

² The Agreement may be accessed on MTMC's web page located at www.mtmc.army.mil. You can find the Agreement by clicking the following sequence of links: passenger, carrier and programs, car rental carriers, car rental agreement number 3. The current list of participating companies can be found here or from your local commercial travel office (CTO) or from the MTMC Passenger Programs Division at (703) 428-3037.

October 2002. The most significant change to the Agreement requires the participating rental agency bear the risk of damage to or loss of the rental vehicle. The prior Agreement had shifted the burden from the rental agency to the command sponsoring the travel. That change has essentially been undone. Effective 1 October 2002, the rental agency will bear the risk of damage/loss of the rental vehicle, subject to the exceptions listed in the Agreement, **even if** the damage/loss was caused by the negligent act or omission of the government driver. The Agreement also imposes a government administrative rate supplement (GARS) of five U.S. dollars (\$5.00) per rental day worldwide. While this fee may increase the cost to the government for the rental of vehicles in the execution of official travel orders, it is expected to relieve commands of the high costs incurred from rental agency claims for damaged rental vehicles. In light of the GARS, non-waivable excess fees (NWEF) that were traditionally charged in some OCONUS locations are abolished.

4. Government travelers must ensure they comply with all rules and regulations governing the acquisition and use of rental cars, and must be aware of the procedures to follow if damage to the vehicle occurs.

(a) References (b) and (c) require all travelers make travel reservations, including reservations for rental cars, with a commercial travel office (CTO). [Ref (b): Section U3120(B)(1), and Ref (c): Section C2102(B)(1)] Exceptions to this requirement are very limited and references (b) and (c) state that when an available CTO is not used, reimbursement for a rental car will be limited to what it would have cost if a CTO had made the arrangements. [Ref (b): Section U3415(B)(3), and Ref (c): Section C2102 (B)(3)] The CTO will ensure that a reservation for a vehicle rental is made with a rental agency that is a "participating provider" under the Agreement. This will ensure the Government gets all the benefits that accrue under the Agreement.

(b) When the traveler arrives at the rental agency to pick up the rental vehicle, they must present **either** their Government Travel Credit Card (GTCC) or a copy of their official travel orders to identify themselves as a government traveler. Additional authorized drivers are not required to be listed on the rental contract. An authorized driver is any properly licensed person, including the renter and fellow employees while acting within the scope of their employment duties. The renter will not be bound by any stipulation in

any rental agreement or contract that is inconsistent with any terms in the Agreement.

(c) If you are involved in an accident with the rental vehicle, you should immediately notify the rental agency, and the local police department if applicable. You will be required to file an accident report with the rental agency. You should get a copy of that report, if possible, and report the accident to your command's SJA or legal advisor when you return from travel.

(d) The Agreement prohibits the rental agency from charging any costs, other than the rental fee, to your personal credit card. If you receive a bill for damages or the rental agency charges your credit card for damage to the rental vehicle, contact your command legal advisor immediately.

5. If the traveler fails to rent from a rental agency that is a participating provider under the Agreement,³ the cost of damage/loss is **NOT** borne by the rental agency. The terms of the contract he signed when he rented the vehicle apply. That is, he must return the vehicle in the same condition it was in when he rented it. If the traveler damages the rental vehicle, his command must determine if the damage occurred while the vehicle was being used for an official purpose as defined in references (b) and (c). [Ref (b): Section U3415(G), and Ref (c): Section C2102(E)] If the command determines the vehicle was damaged while being used for one of the official purposes listed in the references, the command may reimburse the traveler or make direct payment to the rental agency. References (b) and (c) apply. [Ref (b): Sections U3415(C)(2)(b) and (c), and Ref (c): Section 2102(D)(2)] If the command determines that the vehicle was damaged while being used for other than an official purpose, the command should inform the rental agency of this determination and instruct the rental agency to proceed directly against the traveler for reimbursement. If the traveler rented the vehicle using the GTCC, VISA provides coverage that does not have a scope of employment or official purpose limitation. The traveler's command need only certify, when appropriate, that the traveler's primary purpose for the rental was to carry out the business of the government. For assistance in filing a claim, please contact VISA at 1-800-VISA-911. Remember, in order to take advantage of the coverage offered by the GTCC, the traveler must notify VISA of the accident within 20 days after it occurs.

³ Some remote and foreign locations do not have participating providers and some travelers are exempt from using a CTO to make their rental reservations.

The traveler may also submit the claim to his personal insurance carrier. The Government cannot pay a claim for damages unless the damage occurred while the vehicle was being used for an official purpose as described in references (b) and (c). [Ref (b): Section U3415(G), and Ref (c): Section C2102(E)] Please note that "official purpose" is not the same as "scope of employment".

6. The guidance in this update is limited to damage/loss to rental vehicles and does not pertain to injuries to third parties or damage to other property. The Agreement provides that participating providers will provide primary liability insurance for personal injury and property damage suffered by third parties as a result of the traveler's negligent act or omission.⁴ This provision has not changed. If a government traveler is sued in his or her individual capacity, the Government will determine if this person was acting within the scope of their employment at the time of the act or omission. This determination is based on state law. If so, the exclusivity provisions of the Federal Tort Claims Act⁵ enable the individual to seek removal of their name as the defendant in the lawsuit and substitute the United States. If it is determined that the traveler was not acting within the scope of his employment at the time, the traveler is personally liable for all damages to third parties.

7. Judge Advocates should ensure that government travelers and commands are aware of their rights and responsibilities under the new MTMC Agreement, and the regulations set forth in the references. My point of contact in this matter is LT Amanda St. Claire. She can be reached at (202) 685-4596/4600, (dsn 325), or stclaireaa@jag.navy.mil.

/S/
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⁴ Paragraph 9a of the Agreement provides for coverage for personal injury or death of \$100,000 per person/ \$300,000 per incident, and \$25,000 for property damage.

⁵ See Westfall legislation (The Federal Driver's Act, 28 U.S.C. 2679)